U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 18 2007

EAC 06 091 50381

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. According to the Form I-140 petition, part 6, the petitioner seeks employment as a "Flight Manager, Engineer-Economist (Logistics)." The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director did not contest that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but concluded that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States. In reaching this conclusion, the director concluded that the record lacked evidence of the petitioner's past accomplishments and evidence that he would be continuing to work in the occupation listed on the petition.

On appeal, the petitioner submits a letter from his employer and a reference letter. For the reasons discussed below, the petitioner has not established his eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The first issue is whether the petitioner qualifies for the classification sought as either a member of the professions holding an advanced degree or as an alien of exceptional ability. The director did not contest that the petitioner is a member of the professions holding an advanced degree. The AAO, however, maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On

appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." *Id.*

On the uncertified Form ETA 750, the petitioner indicated that he had a "bachelor's" degree in management issued by the Georgian Technical University in January 2000 and several certificates. The petitioner submitted his "Bachelor of Economics" from the Georgian Technical University dated March 8, 2000 and certificates that confirm the completion of individual courses. In response to the director's request for additional evidence, the petitioner submitted an evaluation of his Bachelor of Economics from Global Language Services. Without any explanation or evaluation of the petitioner's coursework, the evaluation concludes that the petitioner's Bachelor of Economics is equivalent to a "Combined Bachelor and Master of Science Degree in Management Information Systems from a regionally accredited educational institution in the United States."

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The record does not contain the petitioner's transcript, but we note that he indicated on the Form ETA 750 that he began pursuing his degree in September 1995. Thus, the petitioner completed his degree in nine semesters. According to the Form ETA 750, the petitioner was also working full-time as of June 1996. Without an evaluation of the petitioner's credit hours and an explanation of Georgia's education system explaining why a Georgian Bachelor of Economics is equivalent to a U.S. Master of Management Information Systems, we cannot consider the evaluation from Globe Language Services as credible evidence that the petitioner holds an advanced degree.

Assuming the petitioner's Bachelor of Economics is equivalent to a baccalaureate from a regionally accredited institution in the United States, the petitioner may still be considered to hold an advanced degree if he can demonstrate five years of post-baccalaureate progressive experience in his specialty. If we presume that "specialty" in 8 C.F.R. § 204.5(k)(2) refers to the area of concentration for the baccalaureate, the petitioner must demonstrate five years of progressive post-baccalaureate experience in the field of economics. Even assuming that "specialty" refers to the area of employment the alien seeks to pursue, the petitioner would need to demonstrated five years of progressive post-baccalaureate experience as a "flight manager, engineer-economist (logistics)."

The petitioner lists his post-baccalaureate experience as a "flight manager" with [redacted] Ltd. The petitioner's work record, however, reflects that he worked as an "operator" for [redacted] from May 1, 2000 through August 31, 2005, the same position in which he worked prior to receiving his degree in economics. The work record does not list any promotions during that five-year period. The petitioner submitted two letters addressing his post-baccalaureate employment. The first is from [redacted], Director of Aviafinance Service, who asserts that the petitioner worked as an "operator manager" for Aviafinance Service without explaining the petitioner's duties. The second letter is from [redacted] Director of Air Freight Service, Ltd., asserting that the petitioner worked at that company from January 5, 2005 through August 1, 2005, but failing to provide the petitioner's job title or duties.

On appeal, the petitioner submits a letter from [redacted], Secretary General of the Euro-Asian International Community in Georgia asserting that the petitioner worked as the Assistant Secretary General of the organization from September 2001 to February 2003. The petitioner did not claim this employment on his ETA 750 and it is not listed on his work record. This newly claimed employment conflicts with the petitioner's full-time employment for Aviafinance Service. Regardless, even if we accepted this newly claimed employment as credible, it represents less than two years of employment. Thus, it cannot serve to demonstrate that the petitioner has at least five years of post-baccalaureate experience in economics.

Without additional evidence of the petitioner's duties during the post-baccalaureate employment documented initially, we cannot conclude that this employment was either progressive or in his area of specialty. Thus, the petitioner has not demonstrated that he holds the equivalent of an advanced degree.

Moreover, even if the petitioner has the education required to be a member of the professions, he must demonstrate that his proposed occupation is a profession in order to qualify for classification as a member of the professions. *Matter of Shah*, 17 I&N Dec. 244, 247 (Regl. Commr. 1977); *Matter of Ulanday*, 13 I&N Dec. 729 (BIA 1971); *Matter of Medina*, 13 I&N Dec. 506 (Regl. Commr. 1970). The petitioner included "engineer" on the Form I-140 petition, Part 6, but the record does not reflect that he seeks employment as an engineer. The petitioner initially provided no evidence regarding his future employment. In response to the director's request for additional evidence, the petitioner submitted a letter from [redacted], Vice President for Systems Analysis and Human Resources at Premium Business Products, Inc., indicating that the petitioner had "availed himself as an apprentice

to the company." Mr. [redacted] further asserts that the petitioner would be creating a multi-lingual website and handling customer service for foreign customers. The petitioner would be paid $25,000 annually plus a commission on business derived from the website and business the petitioner brings to the company. On appeal, the petitioner asserts that he is submitting evidence that he will be employed as an economist. The petitioner submits a new letter from Mr. [redacted] who never asserts that the petitioner will be employed as an economist. Rather, it appears that Mr. [redacted] is offering the petitioner a position as a sales associate, asserting that the petitioner's salary will be "comparable to our other experienced associates."

The petitioner has not demonstrated that the occupation "sales associate" is a profession in that it requires a baccalaureate for entry into the profession. As the petitioner has not demonstrated any other job prospects, we conclude that the petitioner is not eligible for immigrant classification as a member of the professions.

As the petitioner has not demonstrated that he is a member of the professions holding an advanced degree, the next issue is whether the petitioner qualifies as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." The petitioner claims to meet the following criteria.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability

Section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning shall not by itself be considered sufficient evidence of exceptional ability. Thus, we must determine whether the petitioner's education is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered.

As discussed above, the record is ambiguous as to the petitioner's prospective job title. It appears that the petitioner's prospective employer seeks to hire the petitioner as a sales representative with some website development ancillary duties. While the petitioner's degree in economics and certificates in various computer classes may not demonstrate a degree of expertise above that ordinarily encountered in the information technology field, the petitioner is arguably well educated for a sales representative position. Thus, we will not contest that the petitioner meets this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought

The petitioner began his current position as an apprentice and the record lacks evidence that, as of the date of filing, the petitioner had any experience in his current occupation. Thus, the petitioner has not established that he meets this criterion.

A license to practice the profession or certification for a particular profession or occupation

The record contains no evidence relating to this criterion.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability

The petitioner must demonstrate his eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Thus, he must be able to demonstrate that, as of that date, he had already received remuneration for services indicative of exceptional ability. The record contains no evidence of the petitioner's remuneration prior to the date of filing. Thus, the petitioner has not established that he meets this criterion.

Evidence of membership in professional associations

The evidence submitted to meet a given criterion must be indicative of or consistent with a degree of expertise significantly above that ordinarily encountered if that regulatory standard is to have any meaning. The petitioner submitted evidence that he is a member of the non-governmental organization "Light Way" of Georgia and the "Georgian Young Aviators' Association." The petitioner has not submitted any evidence suggesting that membership in either organization is indicative of a degree of expertise above that ordinarily encountered in the field of economics or the occupation of sales associate. Thus, the petitioner has not established that he meets this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

In response to the director's request for additional evidence, the petitioner submitted two award certificates from the Association of Young Economists and a certificate in recognition of "publishing the best scientific work and fruitful student scientific work during 1998" from *Young Economist.* The petitioner, however, has never submitted the published articles he is alleged to have authored. These awards appear limited to students or young economists and do not suggest that the petitioner has a degree of expertise significantly above that ordinarily encountered in the field, which necessarily includes only those who have completed their education. Regardless, even if we concluded that the petitioner meets this criterion, he would only have met two criteria, not the requisite three.

As the petitioner has not demonstrated that he is a member of the professions holding an advanced degree or an alien of exceptional ability, the issue of whether waiving the job offer requirement is in the national interest is moot. Nevertheless, we will address this issue as it was the sole basis of the director's decision.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Commr. 1998)(hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, economics (according to the petitioner) and sales. The director accepted that the proposed benefits of his work would be national in scope. We withdraw that conclusion. The petitioner has not adequately explained how designing a website for an employer and serving as a sales associate will provide benefits beyond the individual employer. We acknowledge Mr. [redacted]'s assertion on appeal that the petitioner's

employment will benefit the entire sales industry. The proposed benefits, however, cannot be so attenuated at the national level as to be negligible. *Id.* at 217 n.3. For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. *Id.* Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. *Id.* As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act. *Id.* We find that the petitioner's services for his employer will not provide benefits that are national in scope at a level above those examples rejected in *NYSDOT.*

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra element of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner initially provided letters from employers praising the petitioner's character and professionalism. As stated above, the submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *Matter of Caron International*, 19 I&N Dec. at 795.

In evaluating the reference letters, we note that letters containing mere assertions of competence and professionalism are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive.

None of the letters in the record, including those submitted on appeal, explain how the petitioner had influenced or impacted the field of economics. In response to the director's request for additional evidence, the petitioner submitted awards limited to students and young member of the field. The

record, however, does not establish the basis of these awards or the accomplishment being recognized. For example, while one of the awards purports to recognize a published article by the petitioner, that article is not in the record. The record also lacks evidence of the impact of the petitioner's alleged publications, such as evidence that they are widely cited.

On appeal, Mr. [redacted] asserts that the petitioner "participated" in projects and social activities of the Euro-Asian International Community but does not identify any of these projects or discuss their significance and impact. Also on appeal, the petitioner submitted a letter from [redacted], Chief Editor of *Akhai Dro*. Mr. [redacted] asserts that the magazine invited the petitioner to publish and review articles in 2003 and 2004. Mr. [redacted] characterizes the petitioner as "an independent and prudent expert in economics" and asserts that the petitioner's articles "had a wide resonance among all layers of society." Mr. [redacted] concludes that the petitioner "is considered to be one of the leading and perspective expert[s] in economics whose talent and creative work is highly respected by the Georgian political elite." As stated above, however, the record does not contain any published articles authored by the petitioner. Moreover, the record does not contain letters from experts identifying novel economic concepts developed by the petitioner, explaining the significance of any articles the petitioner may have authored or providing examples of how the petitioner has influenced the field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.